

# RECORD OF NONJUDICIAL PUNISHMENT PROCEEDINGS

TO (Name, Rank, Organization, SSN, and Major Command of Service Member) <b>THOMAS J. FISCUS, Major General, HQ USAF/JA, [REDACTED] AETC</b>	ATCH(S) <b>1</b>
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## 1. Offer of Nonjudicial Punishment.

a. (Commander initials one block):

- (1) ☒ I am considering whether I should punish you under Article 15, Uniform Code of Military Justice (UCMJ).  
 (2) ☐ I am considering whether I should recommend that \_\_\_\_\_ punish you under Article 15, UCMJ (See Note 1).

b. Your alleged misconduct is in violation of the punitive Article(s) of the UCMJ as listed in item 14.

c. You have the rights listed on Page 2 under "Rights of Member," including the right to consult a lawyer before making any decision, and to have a lawyer assist you throughout the proceedings. You may contact a military defense counsel at ANME-JAT,

Ft. Meade, MD, Lt Col David H. Robertson, telephone number [REDACTED].

d. If you accept nonjudicial punishment proceedings and are found to have committed one or more of the offenses alleged, the maximum punishment the commander taking action may impose on you is listed on Page 3.

e. You will notify me of your decision by 1600 (Time), 13 Dec 04 (Date) unless I grant you an extension of time (See Note 2).

NAME/RANK/ORGANIZATION OF COMMANDER <b>DONALD G. COOK, General, AETC/CC</b>	SIGNATURE <u>[REDACTED]</u>	DATE <b>7 Dec. 04</b>
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## 2. Service.

NAME/RANK/ORGANIZATION PERSON SERVING MEMBER (See Note 3) <b>MICHAEL M. DUNN, Lt Gen, NDU President</b>	SIGNATURE <u>[REDACTED]</u>	TIME SERVED <b>1500</b>	DATE SERVED <b>8 Dec 04</b>
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## 3. Member's Acknowledgement and Elections. I understand the rights listed on Page 2 of this form and acknowledge the recoupment statement in item 14. (Member initials one block on each line):

- a. ☒ I have consulted a lawyer. ☐ I have not consulted a lawyer.  
 b. ☒ I waive my right to court-martial and ☐ I demand trial by court-martial in lieu of nonjudicial punishment.  
 c. ☒ I have attached a written presentation. ☐ I have not attached a written presentation  
 d. ☒ I request a personal appearance before you and that it not be public. ☐ I request a personal appearance before ☐ I do not request a personal appearance before you.

NAME/RANK OF SERVICE MEMBER <b>THOMAS J. FISCUS, Major General</b>	SIGNATURE <u>[REDACTED]</u>	TIME <b>1450</b>	DATE <b>13 Dec 04</b>
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## 4. Commander's Decision.

- a. I have considered the evidence, including any matters you have presented and find that: (Commander initials one block)  
 (1) ☐ Nonjudicial punishment is not appropriate or you did not commit the offense(s) alleged. I hereby terminate these proceedings.  
 (2) ☒ You committed one or more of the offenses alleged. I lined out and initialed the offense(s), if any, for which I determined nonjudicial punishment is not appropriate or which you did not commit. I hereby impose punishment as listed in item 14.  
 b. Reductions in grade, forfeitures in pay, and suspensions of any punishment are effective immediately. All other punishments take effect when you are notified of the punishment, unless otherwise stated.  
 c. You must notify me by 0900 hrs. (Time), 27 Dec 04 (Date) whether you appeal, unless I grant you an extension of time. You are entitled to advice of counsel in making this decision. You must notify me of your appeal decision and submit any matters you wish considered within the time provided or your right to appeal is waived. Any documents supporting your appeal must be submitted at the same time you make your appeal decision. A decision not to appeal is final. (See Note 4)

NAME/RANK/ORGANIZATION OF COMMANDER (See Note 5) <b>DONALD G. COOK, General, AETC/CC</b>	SIGNATURE <u>[REDACTED]</u>	DATE <b>12/21/04</b>
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## 5. Member's Acknowledgement. I acknowledge receipt of the punishment and my right to appeal.

NAME/RANK OF SERVICE MEMBER <b>THOMAS J. FISCUS, Major General</b>	SIGNATURE <u>[REDACTED]</u>	TIME <b>0830</b>	DATE <b>21 Dec 04</b>
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## 6. Member's Appeal Decision (member initials only one block). Member's decision ends the time limit to appeal.

- a. ☒ I do not appeal.  
 b. ☐ I appeal and submit matters in writing.  
 c. ☐ I appeal and do not submit matters in writing.

NAME/RANK OF SERVICE MEMBER <b>THOMAS J. FISCUS, Major General</b>	SIGNATURE <u>[REDACTED]</u>	TIME <b>0830</b>	DATE <b>21 Dec 04</b>
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7. **Commander Action on Appeal** (*commander initials one block*). After considering all matters presented in your appeal, I hereby ☐ deny your appeal. ☐ grant your appeal, as shown in item 14. (See Note 6)

NAME/RANK/ORGANIZATION OF COMMANDER	SIGNATURE	DATE
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8. **Appellate Authority Action on Appeal** (*appellate authority initials one block*). After considering all matters presented in your appeal, I hereby ☐ deny your appeal. ☐ grant your appeal, as shown in item 14.

NAME/RANK/ORGANIZATION OF APPELLATE AUTHORITY	SIGNATURE	DATE
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9. **Unfavorable Information File (UIF) Action.** (*Commander initials one block*). This action ☒ will be filed in the Member's UIF. ☐ will not be filed in the Member's UIF. (See Note 7)

NAME/RANK/ORGANIZATION OF COMMANDER	SIGNATURE	DATE
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DONALD G. COOK, General HQ AETC/CC

21/12/04

10. **Member's Acknowledgement.** I have been informed of the UIF decision. I have seen the action taken on any appeal.

NAME/RANK OF SERVICE MEMBER	SIGNATURE	DATE
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THOMAS J. FISCUS, Maj Gen, USAF

21 Dec 04

11. **Servicing SJA Legal Review.** Record is legally sufficient and the action is final.

NAME/RANK/ORGANIZATION OF REVIEWING ATTORNEY	SIGNATURE	DATE
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Bruce T. Brown, Colonel, USAF HQ AETC/JA

21 Dec 04

12. **MPF and AFO Distribution.** Copy received by MPF on \_\_\_\_\_ and AFO on \_\_\_\_\_.  
(Date/Initials) (Date/Initials)

13. **GCMCA SJA Administrative Supervisory Review.** Record is in compliance with AFI 51-202 and MCM, Part V.

NAME/RANK/ORGANIZATION OF REVIEWING ATTORNEY	SIGNATURE	DATE
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BRUCE T. BROWN, Colonel, USAF HQ AETC/JA

21 Dec 04

#### RIGHTS OF MEMBER

1. You have all the rights specified in Article 15 of the Uniform Code of Military Justice (UCMJ), in Part V of the Manual for Courts-Martial (MCM) and in Air Force Instruction (AFI) 51-202, *Nonjudicial Punishment*. These rights are summarized below:
  - a. You have the right to consult a lawyer before making any decisions, and a lawyer may assist you throughout the proceedings. A military defense counsel is available to advise you, free of charge, or you may retain civilian counsel at your own expense.
  - b. You have the right (1) to accept nonjudicial proceedings under Article 15, UCMJ, in which case your commander (or the commander to whom this action is sent) will decide whether you committed the alleged offense, or (2) to demand trial by court-martial which requires proof of guilt beyond a reasonable doubt. You have 3 duty days to make this decision, unless you request an extension of time and the commander grants the extension. Your acceptance of nonjudicial punishment proceedings is not an admission that you committed the alleged misconduct. The commander will make that decision only after you present your evidence or statement in defense, if you choose to do so.
  - c. If you demand trial by court-martial, charges could be referred for trial by summary, special or general court-martial. You have a right to be represented by counsel at a court-martial. You may not be tried by summary court-martial over your objection. You have additional rights at a trial by court-martial which you should ask your lawyer to explain.
  - d. You have the right to examine the evidence against you before you make any decisions. Your lawyer may assist you in making a statement and/or obtaining evidence in your defense, and for use in extenuation and mitigation.
  - e. If you accept nonjudicial punishment proceedings, you have the right (1) to make a full oral and/or written presentation to the commander (or a designee, in some cases) who will decide your punishment, (2) to present witnesses who are reasonably available, and (3) to be accompanied by someone to speak on your behalf. You may request the proceeding be open or closed to the public, but the commander makes the decision.
  - f. You do not have to make any oral or written statement regarding the offense(s) of which you are accused and any statement made may be used as evidence against you in a later proceeding. See Article 31b, UCMJ.
2. If the commander imposes punishment, you have 5 calendar days to appeal to the next superior commander. You have the right to consult with a lawyer before deciding whether to appeal and to assist you in your appeal. In your appeal, you may present additional written matters.

**Note 1:** If a personal appearance is made to someone other than the commander who will impose punishment, that person sends, by separate indorsement, a summary of the appearance and copies of all documents presented, to the imposing commander.

**Note 2:** The date and time in item 1e must be a minimum of 3 duty days (including weekends and holidays if normally scheduled duty days for the member) from the date and time the member is notified in item 2.

**Note 3:** The initiating commander may direct a subordinate, senior to the member, when practicable, to notify and serve the member. The person serving the member, whether the commander or subordinate, signs and annotates the date and time of service.

**Note 4:** The date and time in item 4c must be a minimum of 5 calendar days from the date and time the member is notified in item 5.

**Note 5:** If a member is an officer or E-7 or above, see AFI 36-2608, *Military Personnel Records System*, for further guidance concerning filing the Record of Nonjudicial Punishment in the appropriate selection record.

**Note 6:** If the imposing commander grants less than the full relief requested, the commander must forward the appeal to the appellate authority through the servicing Staff Judge Advocate. See AFI 51-202, paragraph 4.6, for further guidance.

**Note 7:** See AFI 36-2907, *Unfavorable Information File (UIF) Program*, for further guidance.

**Note 8:** A continuation page may be used if necessary. Identify the information by the item number

## MAXIMUM PERMISSIBLE PUNISHMENTS

1. If the commander imposing punishment is a:
  - a. General Officer or General Court-Martial Convening Authority and you are an officer: Forfeiture of one-half month's pay per month for two months, 60 days restriction, 30 days arrest in quarters, and a reprimand.
  - b. Colonel and you are an officer: 30 days restriction and a reprimand.
  - c. Lieutenant Colonel or above, and you are enlisted: Forfeiture of one-half month's pay per month for two months, 60 days restriction, 45 days extra duty, 30 days correctional custody, a reprimand, and reduction of one grade; E-4 and below may be reduced to E-1; E-8 and E-9 may be reduced one grade only by a commander who has promotion authority to those grades.
  - d. Major and you are in grade E-1 through E-7: Forfeiture of one-half month's pay per month for two months, 60 days restriction, 45 days extra duty, 30 days correctional custody, a reprimand, and reduction of one grade for E-5 and E-6; E-4 and below may be reduced to E-1.
  - e. Lieutenant or Captain, and you are in grade E-1 through E-7: Forfeiture of 7 days pay, 14 days restriction, 14 days extra duty, 7 days correctional custody, a reprimand, and reduction of one grade for E-5 and below only.
2. Restriction and extra duties may be combined to run concurrently, but the combination may not exceed the maximum imposable for extra duties. Correctional custody may not be imposed in combination with restriction or extra duties. If reduction is imposed, forfeiture of pay is based on the grade to which the member was reduced, even if the reduction was suspended. See Part V, MCM, for additional guidance.

14. (See Note 8)

**Item 7 Cont'd:** STATEMENT OF UNDERSTANDING REGARDING RECOUPMENT OF EDUCATION ASSISTANCE, SPECIAL PAY, OR BONUSES: I understand that the Air Force may be entitled to recoup a portion of education assistance, special pay, or bonus money which I received, if any, if I separate before completing the period of active duty I agreed to serve. I understand this recoupment applies regardless whether I voluntarily separate or I am involuntarily discharged. I further understand: (1) the recoupment in all cases is an amount that bears the same ratio to the total amount or cost provided to me, as the unserved portion of active duty bears to the total period of active duty I agreed to serve; and (2) that if I dispute that I am indebted for educational assistance, a board or other authority will make findings and recommendations concerning the validity of the indebtedness.

**Item 1b Cont'd:**

See specifications attached.

Item 4a(2). (continued)

Forfeiture of \$5300 pay per month for two months.

Reprimand:

[REDACTED]

Art. 133, UCMJ

Specification 1: You, a married man, did, at or near Washington, D.C. and at various worldwide locations, on divers occasions, between on or about 1 January 2003 and on or about 23 August 2004, wrongfully and dishonorably engage in an unprofessional relationship and exchange inappropriately intimate e-mail with Major [REDACTED] while pursuing a romantic or sexual relationship outside your marriage with the said Major [REDACTED]

Specification 2: You did, at or near the Pentagon, Washington, D.C., between on or about 1 January 2003 and on or about 31 July 2004, wrongfully and dishonorably kiss on the lips Major [REDACTED] a subordinate subject to your orders.

Specification 3: You did, at or near the Pentagon, Washington, D.C., between on or about 15 February 2004 and on or about 15 March 2004, wrongfully and dishonorably kiss on the lips Ms. [REDACTED] a subordinate subject to your orders.

Specification 4: You did, at or near Bolling Air Force Base, Washington, D.C., between on or about 1 July 2004 to on or about 1 September 2004, wrongfully and dishonorably massage the neck of and place your hand on or near the knee of Major [REDACTED] a subordinate subject to your orders.

Specification 5: You did, at or near Washington, D.C. and at various worldwide locations, on divers occasions, between on or about 1 January 2003 and on or about 31 August 2004, wrongfully and dishonorably engage in an unprofessional relationship of inappropriate familiarity with Major [REDACTED]

Specification 6: You, a married man, did, at or near Washington, D.C. and at various worldwide locations, on divers occasions, between on or about 1 April 2003 and on or about 31 July 2004, wrongfully and dishonorably exchange inappropriately intimate e-mail with Ms. [REDACTED] a person not your wife.

Specification 7: You, a married man, did, at or near Washington, D.C. and at various worldwide locations, on divers occasions, between on or about 1 January 2003 and on or about 30 December 2003, wrongfully and dishonorably exchange inappropriately intimate e-mail with Ms. [REDACTED] a person not your wife.

Specification 8: You, a married man, did, at or near Washington, D.C. and at various worldwide locations, on divers occasions, between on or about 1 January 2003 and on or about 31 July 2004, wrongfully and dishonorably exchange inappropriately intimate e-mail with Ms. [REDACTED] a person not your wife.

Art 134, UCMJ

Specification 1: You did, at or near the Pentagon, Washington, D.C., between on or about 17 August 2004 and on or about 23 August 2004, wrongfully endeavor to impede an investigation of you, by deleting incriminating e-mail files from your official Department of Defense computer system, with the intent to obstruct the due administration of justice.

Specification 2: You did, at or near Washington, D.C. and at various worldwide locations, on divers occasions between on or about 1 January 2003 and on or about 23 August 2004, knowingly fraternize with Technical Sergeant [REDACTED] an enlisted person, on terms of military equality, to wit: exchanging inappropriately personal e-mails and using and permitting unduly familiar names in violation of the custom of the United States Air Force that officers shall not fraternize with enlisted persons on terms of military equality.

Art. 92, UCMJ

Specification: You did, at or near Washington, D.C. and at various worldwide locations, on divers occasions, between on or about 1 January 2003 and on or about 30 September 2004, violate a lawful general regulation, to wit: paragraph 3.3, Air Force Instruction 33-119, *Electronic Mail (E-Mail) Management and Use*, dated 1 March 1999, by wrongfully using your official Department of Defense computer e-mail account for other than official use.